

MONTANA LEGISLATIVE HISTORY

Chapter 112 19 97

Bill H 152 S _____

Original bill & history 1 c

H. Committee on NOT RESOURCES

Hearing Date(s) 1/15 ✓ c

1/22 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on NOT RESOURCES

Hearing Date(s) 2/5 ✓ c NO EXHIBITS

2/7 ✓ c NO EXHIBITS

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes 1 No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

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1/28	HEARING		
1/29	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
1/31	2ND READING CONCURRED	47	0
2/01	3RD READING CONCURRED	45	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	92	6
4/11	3RD READING CONCURRED AS AMENDED	89	7
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 393		
	EFFECTIVE DATE: 04/28/97		

HB 152 INTRODUCED BY GRADY

LC0851 DRAFTER: MITCHELL

SEPARATE TO THE MONTANA HAZARDOUS WASTE AND UNDERGROUND
STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE
UNDERGROUND STORAGE TANK PROVISIONS INTO A SEPARATE ACT
BY REQUEST OF DEPARTMENT OF ENVIRONMENTAL QUALITY

1/01	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO NATURAL RESOURCES		
1/15	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	91	6
1/28	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO NATURAL RESOURCES		
2/05	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	50	0
3/11	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/13	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 112		
	EFFECTIVE DATE: 10/01/97		

HB 153 INTRODUCED BY GRADY

LC0853 DRAFTER: WILLIAMS

PROVIDE AN ADMINISTRATIVE APPEAL OF A DECISION TO GRANT OR
DENY AN APPLICATION FOR A PERMIT TO DISCHARGE TO SURFACE
WATER OR GROUND WATER
BY REQUEST OF DEPARTMENT OF ENVIRONMENTAL QUALITY

1/01	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO NATURAL RESOURCES		
1/09	FISCAL NOTE RECEIVED		
1/10	HEARING		
1/10	FISCAL NOTE PRINTED		
1/17	TABLED IN COMMITTEE		
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HOUSE BILL NO. 152

INTRODUCED BY GRADY

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE UNDERGROUND STORAGE TANK PROVISIONS INTO A SEPARATE ACT; AND AMENDING SECTIONS 75-2-216, 75-10-210, 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411, 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203, 75-11-302, AND 75-11-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 15] shall be known and may be cited as the "Montana Underground Storage Tank Act".

NEW SECTION. Section 2. Findings and purpose. The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under [sections 1 through 15]. It is the purpose of [sections 1 through 15] to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in [sections 8 through 13] and other appropriate authority provided by law to remedy violations of requirements established under [sections 1 through 15].

NEW SECTION. Section 3. Definitions. Unless the context requires otherwise, in [sections 1 through 15], the following definitions apply:

- (1) "Board" means the board of environmental review provided for in 2-15-3502.
- (2) "Department" means the department of environmental quality provided for in 2-15-3501.
- (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or

1 placing of any regulated substance into or onto the land or water so that the regulated substance or a
2 constituent of the regulated substance may enter the environment or be emitted into the air or discharged
3 into any waters, including ground water.

4 (4) "Person" means the United States, an individual, firm, trust, estate, partnership, company,
5 association, corporation, city, town, local governmental entity, or any other governmental or private entity
6 whether organized for profit or not.

7 (5) "Regulated substance":

8 (a) means:

9 (i) a hazardous substance as defined in 75-10-602; or

10 (ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions
11 of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

12 (b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part

13 4.

14 (6) "Storage" means the actual or intended containment of regulated substances, either on a
15 temporary basis or for a period of years.

16 (7) "Underground storage tank":

17 (a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

18 (i) any one or a combination of tanks used to contain a regulated substance, the volume of which
19 is 10% or more beneath the surface of the ground; and

20 (ii) any underground pipes used to contain or transport a regulated substance and connected to a
21 storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely
22 underground;

23 (b) does not include:

24 (i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
25 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

26 (ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
27 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is
28 stored;

29 (iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used
30 to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on

the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix).

NEW SECTION. Section 4. Powers of department. (1) The department may:

(a) administer and enforce the provisions of [sections 1 through 15], rules implementing [sections 1 through 15], and orders and permits issued pursuant to [sections 1 through 15];

(b) accept and administer grants from the federal government and from other sources, public and private; and

(c) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any regulated substance.

(2) The department shall integrate all provisions of [sections 1 through 15] with other laws administered by the department to avoid unnecessary duplication.

NEW SECTION. Section 5. Administrative rules. The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) standards for design, construction, installation, and closure;

(5) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(6) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and

(7) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority to implementation of rules adopted by the department of justice that relate to underground storage tanks.

NEW SECTION. Section 6. Underground storage tank leak report -- inspections -- sampling.

If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

(2) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of [sections 1 through 15] or rules adopted under [sections 1 through 15]; or

(ii) records pertinent to the regulated substances activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the regulated substances for the purposes of developing rules under [sections 1 through 15] or enforcing the provisions of [sections 1 through 15], rules adopted under [sections 1 through 15], or a permit or an order issued under [sections 1 through 15].

(3) In the course of an inspection under this section, the employee or agent of the department may take samples of any regulated substance or suspected regulated substance, including samples from any soil or ground water. If the employee or agent of the department takes a sample of any regulated substance or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a

1 copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

2
3 **NEW SECTION. Section 7. Regulated substance inventory.** (1) The department is authorized to
4 conduct an inventory of sites and locations in the state where regulated substances have been stored or
5 disposed of at any time.

6 (2) If the department determines that the presence of a regulated substance or the release of the
7 regulated substance may present a substantial hazard to the public health or to the environment, it may
8 issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing,
9 analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

0 (3) An order issued under subsection (2) must require that the person to whom the order is issued
1 submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
2 analysis, and reporting.

3 (4) If the department determines that the owner or operator referred to in subsection (2) is not able
4 to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the
5 activities.

6 (5) For the purposes of carrying out this section, the department may exercise the powers set forth
7 in [section 6].

8
9 **NEW SECTION. Section 8. Administrative enforcement.** (1) When the department believes that
0 a violation of [sections 1 through 15] or a rule adopted under [sections 1 through 15] has occurred, it may
1 serve written notice of the violation personally or by certified mail on the alleged violator or the violator's
2 agent. The notice must specify the provision of [sections 1 through 15] or the rule alleged to be violated
3 and the facts alleged to constitute a violation and may include an order to take necessary corrective action
4 within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after
5 the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
6 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

7 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
8 shall either affirm or modify the department's order. An order issued by the department or by the board
9 may prescribe the date by which the violation must cease and may prescribe time limits for particular
0 action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's

1 order.

2 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may

3 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
4 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
5 of or to provide information regarding the alleged violation or its actual or potential impact on the public
6 health and welfare or the environment;

7 (b) initiate action under [section 9, 10, 12, or 13]; or

8 (c) assess administrative penalties and issue corrective action orders under 75-10-423.

9 (4) In the case of disobedience of any subpoena issued and served under this section or of the
10 refusal of any witness to testify as to any material matter with regard to which the witness may be
11 interrogated in a hearing or investigation before the board or the department, the board or department may
12 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
13 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
14 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
15 punishable by contempt of court in the same manner and by the same procedures as is provided for like
16 conduct committed in the course of civil actions in district court.

17 (5) This section does not prevent the board or department from making efforts to obtain voluntary
18 compliance through warning, conference, or any other appropriate means.

19
20 **NEW SECTION. Section 9. Injunctions.** The department may institute and maintain, in the name
21 of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

22 (1) immediately restrain any person from engaging in any unauthorized activity that is endangering
23 or causing damage to the public health or to the environment;

24 (2) enjoin a violation of [sections 1 through 15], a rule adopted under [sections 1 through 15], or
25 an order of the department or the board; or

26 (3) require compliance with [sections 1 through 15], a rule adopted under [sections 1 through 15],
27 or an order of the department or the board.

28
29 **NEW SECTION. Section 10. Imminent hazard.** Upon receipt of evidence that the storage or disposal
30 of any regulated substance may present an imminent and substantial danger to the public health or to the

environment, the department may commence legal proceedings to immediately restrain or enjoin any person who has contributed to or who is contributing to the storage or disposal from engaging in these activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

NEW SECTION. Section 11. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance. The order must direct the person to clean up and remove the regulated substance, to treat the regulated substance, or to take other actions as may be considered reasonable by the department.

NEW SECTION. Section 12. Civil penalties. (1) A person who violates any provision of [sections 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted under [sections 1 through 15], or orders of the department or the board.

(4) Money collected under this section must be deposited in the state general fund.

NEW SECTION. Section 13. Civil penalties. (1) A person who violates any provision of [sections 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted under [sections 1 through 15], or orders of the department or the board.

(4) Money collected under this section must be deposited in the state special revenue fund and credited to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of LC 823].

NEW SECTION. **Section 14. Venue for legal actions.** All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county in which the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.

NEW SECTION. **Section 15. Construction in event of conflict.** The provisions of [sections 1 through 15] and rules promulgated pursuant to [sections 1 through 15] govern if they conflict with other provisions of Montana law or any action taken by the department under those provisions.

Section 16. Section 75-2-216, MCA, is amended to read:

"75-2-216. Moratorium on certain solid and hazardous waste incinerator permits. (1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to ~~75-10-405(2)(a)~~ or 75-10-416, or [section 5(3) or 11], ~~until October 1, 1993,~~ the department may not issue a permit to a solid or hazardous waste incinerator subject to the requirements of 75-2-215.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215 and in processing air quality permit applications required under 75-2-211 for solid or hazardous waste incinerators."

Section 17. Section 75-10-210, MCA, is amended to read:

"75-10-210. Moratorium on certain solid waste facility permits. (1) Except for remedial actions

1 pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to ~~75-10-405(2)(e)~~ or 75-10-416,
2 or [section 5(3) or 11], until ~~October 1, 1993~~, the department may not issue a license under 75-10-221
3 for a solid waste facility if the facility is also subject to the requirements of 75-2-215.

4 (2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely
5 manner in processing solid waste applications required under 75-10-221."

6
7 **Section 18.** Section 75-10-401, MCA, is amended to read:

8 **"75-10-401. Short title.** This part shall be known and may be cited as the "Montana Hazardous
9 Waste and Underground Storage Tank Act"."

10
11 **Section 19.** Section 75-10-402, MCA, is amended to read:

12 **"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management
13 of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities
14 are matters for statewide regulation and are environmental issues that should properly be addressed and
15 controlled by the state rather than by the federal government.

16 (2) It is the purpose of this part and it is the policy of this state to protect the public health and
17 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
18 or unsound management of hazardous wastes and used oil; to establish a program of regulation over used
19 oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ~~assure~~
20 ensure the safe and adequate management of hazardous wastes and used oil within this state; and to
21 authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the
22 federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

23 ~~(3) The legislature also finds that petroleum products and hazardous substances stored in~~
24 ~~underground tanks are a separate category of substances that are regulated under the federal Resource~~
25 ~~Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by~~
26 ~~the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this~~
27 ~~part to authorize the department to establish, administer, and enforce an underground storage tank leak~~
28 ~~prevention program for these regulated substances. The department may use the authority provided in~~
29 ~~75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of~~
30 ~~underground storage tank requirements established under this part."~~

Section 20. Section 75-10-403, MCA, is amended to read:

"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(6) "Generation" means the act or process of producing waste material.

(7) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(9) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate

1 treatment, storage, or disposal.

2 (11) "Manifest" means the shipping document that is originated and signed by the generator and
3 that is used to identify the hazardous waste and its quantity, origin, and destination during its
4 transportation.

5 (12) "Person" means the United States, an individual, firm, trust, estate, partnership, company,
6 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
7 whether organized for profit or not.

8 ~~(13) "Regulated substance":~~

9 ~~(a) means:~~

10 ~~(i) a hazardous substance as defined in 75-10-602; or~~

11 ~~(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions~~
12 ~~of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);~~

13 ~~(b) does not include a substance regulated as a hazardous waste under this part.~~

14 ~~(14)(13) "Storage" means the actual or intended containment of regulated substances, hazardous~~
15 ~~wastes, or both, either on a temporary basis or for a period of years.~~

16 ~~(15)(14) "Transportation" means the movement of hazardous wastes from the point of generation~~
17 ~~to any intermediate points and finally to the point of ultimate storage or disposal.~~

18 ~~(16)(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste~~
19 ~~by air, rail, highway, or water.~~

20 ~~(17)(16) "Treatment" means a method, technique, or process, including neutralization, designed~~
21 ~~to change the physical, chemical, or biological character or composition of any hazardous waste so as to~~
22 ~~neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,~~
23 ~~amenable for storage, or reduced in volume.~~

24 ~~(18) "Underground storage tank":~~

25 ~~(a) means, except as provided in subsections (18)(b)(i) through (18)(b)(xii):~~

26 ~~(i) any one or a combination of tanks used to contain a regulated substance, the volume of which~~
27 ~~is 10% or more beneath the surface of the ground; and~~

28 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a~~
29 ~~storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely~~
30 ~~underground;~~

(b) does not include:

(i) ~~a farm or residential tank that was installed as of April 27, 1996, that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;~~

(ii) ~~a farm or residential tank that was installed as of April 27, 1996, that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;~~

(iii) ~~farm or residential underground pipes that were installed as of April 27, 1996, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~

(iv) ~~a septic tank;~~

(v) ~~a pipeline facility, including gathering lines, regulated under:~~

(A) ~~the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;~~

(B) ~~the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or~~

(C) ~~state law comparable to the provisions of law referred to in subsection (18)(b)(v)(A) or (18)(b)(v)(B), if the facility is intrastate;~~

(vi) ~~a surface impoundment, pit, pond, or lagoon;~~

(vii) ~~a storm water or wastewater collection system;~~

(viii) ~~a flow-through process tank;~~

(ix) ~~a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;~~

(x) ~~a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or~~

(xi) ~~any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix).~~

(19)(17) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

Section 21. Section 75-10-404, MCA, is amended to read:

"75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of environmental quality related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The integration and coordination must be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 22. Section 75-10-405, MCA, is amended to read:

"75-10-405. Administrative rules. (1) The department may, subject to the provisions of 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

- 1 (e) requirements for corrective action within and outside facility boundaries and for financial
2 assurance of that corrective action;
- 3 (f) requirements for manifests and the manifest system for tracking hazardous waste and for
4 reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste
5 management facilities;
- 6 (g) requirements for training of facility personnel, for financial assurance of facility owners and
7 operators, and for liability of guarantors providing financial assurance;
- 8 (h) requirements for registration of generators and transporters;
- 9 (i) establishing a schedule of fees and procedures for the collection of fees for:
- 10 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;
- 11 (ii) hazardous waste management as provided in 75-10-433;
- 12 (iii) the reissuance and modification of hazardous waste management facility permits; and
- 13 (iv) the registration of hazardous waste generators;
- 14 (j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining
15 any state hazardous waste management facility authorized by 75-10-412;
- 16 (k) requirements for availability to the public of information obtained by the department regarding
17 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;
- 18 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424;
- 19 (m) identification and classification of used oil that is subject to regulation and used oil that is not
20 subject to regulation;
- 21 (n) requirements for the proper management of used oil; and
- 22 (o) other rules that are necessary to obtain and maintain authorization under the federal program.
- 23 (2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this
24 part that are more restrictive than those promulgated by the federal government under the Resource
25 Conservation and Recovery Act of 1976, as amended, except that the department:
- 26 (a) may require the registration of transporters not otherwise required to register with the state of
27 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;
- 28 (b) may require hazardous waste generators and hazardous waste management facilities to report
29 on an annual rather than on a biennial basis;
- 30 (c) may adopt requirements for the prevention and correction of leakage from underground storage

tanks, including:

- ~~(i) reporting by owners and operators;~~
- ~~(ii) financial responsibility;~~
- ~~(iii) release detection, prevention, and corrective action;~~
- ~~(iv) standards for design, construction, installation, and closure;~~
- ~~(v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;~~
- ~~(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and~~

~~(vii) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.~~

~~(d)~~ may adopt regulatory requirements for hazardous waste transfer facilities;

~~(e)(d)~~ shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

~~(f)(e)~~ may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

- (i) may be adopted if there are no federal regulations; or
- (ii) may be more restrictive than federal regulations."

Section 23. Section 75-10-409, MCA, is amended to read:

"75-10-409. Compliance monitoring and reporting —~~underground storage tank leak report.~~ (1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions.

(2) The department may require the owner or operator of a facility to submit reports on ~~such~~ the compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

(3) ~~If an owner or operator of an underground storage tank discovers or is provided with evidence that the tank may have leaked, he must immediately notify the department that a leak may exist.~~

Section 24. Section 75-10-410, MCA, is amended to read:

"75-10-410. Inspections -- sampling. (1) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises or place at which:

(i) ~~regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part;~~

(ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation;

(iii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation or

(iv) records pertinent to the ~~regulated substances~~, used oil, or hazardous waste activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the ~~regulated substances~~, used oil, or hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any substances, used oil, or wastes, including samples from any soil or ground water or from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used oil, hazardous waste, or suspected hazardous waste, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge."

1 **Section 25.** Section 75-10-411, MCA, is amended to read:

2 **"75-10-411. ~~Regulated substance and hazardous~~ Hazardous waste site inventory.** (1) The
3 department is authorized to conduct an inventory of sites and locations in the state where ~~regulated~~
4 ~~substances or~~ hazardous wastes have been stored or disposed of at any time.

5 (2) If the department determines that the presence of a ~~regulated substance or~~ hazardous waste
6 or the release of the ~~regulated substance or~~ waste or any waste constituent may present a substantial
7 hazard to the public health or the environment, it may issue an order requiring the owner or operator of the
8 facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site
9 in order to ascertain the nature and extent of the hazard.

10 (3) In the case of any facility or site not in operation at the time that a determination is made under
11 subsection (2) with respect to the facility or site, if the department finds that the owner of ~~such~~ the facility
12 or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at
13 ~~such~~ the facility or site and of its potential for release, it may issue an order requiring the most recent
14 previous owner or operator of the facility or site who could reasonably be expected to have ~~such~~ actual
15 knowledge to carry out the actions referred to in subsection (2).

16 (4) An order issued under subsection (2) or (3) must require that the person to whom the order is
17 issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
18 analysis, and reporting.

19 (5) If the department determines that the owner or operator referred to in subsection (2) or (3) is
20 not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct
21 ~~such~~ the activities.

22 (6) For the purposes of carrying out this section, the department may exercise the powers set forth
23 in 75-10-410."

24 **Section 26.** Section 75-10-413, MCA, is amended to read:

25 **"75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this
26 part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the
27 violation personally or by certified mail on the alleged violator or the violator's agent. The notice must
28 specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts
29 alleged to constitute a violation and may include an order to take necessary corrective action within a
30

reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order ~~previously issued~~. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418; ~~or~~

~~(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under 75-10-423.~~

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 27. Section 75-10-415, MCA, is amended to read:

"75-10-415. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any ~~regulated substance~~, used oil, or hazardous waste may present an

1 imminent and substantial danger to the public health or the environment, the department may commence
 2 legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past
 3 or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility)
 4 who has contributed to or who is contributing to the handling, storage, treatment, transportation, or
 5 disposal from engaging in these activities or order the person to take other action as may be necessary,
 6 or both. The department may also take appropriate action as may be necessary under this section, including
 7 issuing orders necessary or appropriate to protect the public health and the environment."

8
 9 **Section 28.** Section 75-10-416, MCA, is amended to read:

10 **"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has
 1 discharged, deposited, or spilled any ~~regulated substance~~, used oil, or hazardous waste into or onto any
 2 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
 3 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
 4 ~~a regulated substance~~, used oil, or hazardous waste. The order must direct the person to clean up and
 5 remove the ~~regulated substance~~, used oil, or hazardous waste, to treat the ~~regulated substance~~, used oil,
 6 or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered
 7 reasonable by the department."

8
 9 **Section 29.** Section 75-10-420, MCA, is amended to read:

10 **"75-10-420. Venue for legal actions.** All legal actions affecting hazardous waste management
 11 facilities in the state must be brought in the county in which the facility is located. ~~All legal actions affecting~~
 12 ~~underground storage tanks or the disposal of regulated substances must be brought in the county where~~
 13 ~~the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first~~
 14 ~~judicial district, Lewis and Clark County."~~

15
 16 **Section 30.** Section 75-10-423, MCA, is amended to read:

17 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
 18 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of this chapter
 19 ~~[sections 1 through 15]~~ or any ~~underground storage tank~~ rules promulgated under the authority of this
 20 ~~chapter [sections 1 through 15]~~ may be assessed and ordered by the department to pay an administrative

penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by Title 75, chapter 11, or by this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under this section;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;
- (f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and
- (h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county where in which the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

1 (a) the provision allegedly violated;

2 (b) the facts that constitute the alleged violation;

3 (c) the specific nature of any corrective action that the department requires, estimated costs of
4 compliance with the action, and where to receive help to correct the alleged violation; and

5 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
6 violations.

7 (4) The department shall publish a schedule of maximum and minimum penalties for specific
8 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
9 the violations and the potential for significant harm to the public health or the environment. In determining
10 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused
11 the penalty assessment, the department shall consider the cooperation and the degree of care exercised
12 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant
13 harm resulted to the public health or the environment from the violation.

14 (5) If the department is unable to collect an administrative penalty assessed under this section or
15 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
16 department may take action in district court to recover the penalty amount and any additional amounts
17 assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

18 (6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter, or any
19 other remedy available to the department for violations of underground storage tank laws or rules
20 promulgated under those laws.

21 (7) Administrative penalties collected under this section must be deposited in the state general
22 fund."

23
24 **Section 31.** Section 75-10-423, MCA, is amended to read:

25 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
26 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~
27 ~~[sections 1 through 15]~~ or any ~~underground storage tank~~ rules promulgated under the authority of ~~this~~
28 ~~chapter [sections 1 through 15]~~ may be assessed and ordered by the department to pay an administrative
29 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only
30 to penalties assessed under this section. Each occurrence of the violation and each day that it remains

1 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
2 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
3 within a specified time. Assessment of an administrative penalty under this section may be made in
4 conjunction with any order or other administrative action authorized by ~~Title 76, chapter 11~~, or by this
5 chapter.

6 (2) When the department assesses an administrative penalty under this section, it must have
7 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
8 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

9 (a) the provision alleged to be violated;

10 (b) the facts alleged to constitute the violation;

11 (c) the amount of the administrative penalty assessed under this section;

12 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
13 the assessment of the penalty;

14 (e) the nature of any corrective action that the department requires, whether or not a portion of
15 the penalty is to be suspended;

16 (f) as applicable, the time within which the corrective action is to be taken and the time within
17 which the administrative penalty is to be paid;

18 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
19 nature of any hearing; and

20 (h) that a formal proceeding may be waived.

21 (3) The department shall provide each person assessed a penalty under this section an opportunity
22 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
23 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
24 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
25 and Clark County or the county where in which the alleged violation occurred. This subsection does not
26 apply until the department gives written notice, served personally or by certified mail, to the alleged violator
27 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.
28 The notice must state:

29 (a) the provision allegedly violated;

30 (b) the facts that constitute the alleged violation;

(c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and

(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

(6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter, or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state ~~general~~ special revenue fund and be credited to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of LC 823]."

Section 32. Section 75-10-424, MCA, is amended to read:

"75-10-424. Administrative penalty. (1) The department may assess a person who violates a ~~used oil or hazardous waste~~ provision of this part, or a ~~used oil or hazardous waste~~ rule adopted under this part, an administrative penalty, not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator

1 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

2 (3) In determining the appropriate amount of an administrative penalty, the department shall
3 consider:

4 (a) the gravity and the number of violations;

5 (b) the degree of care exercised by the alleged violator;

6 (c) whether significant harm resulted to the public health or the environment; and

7 (d) the degree of potential significant harm to the public health or the environment.

8 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
9 or any portion of the administrative penalty as determined by the department, the department may seek
10 to recover the amount in an appropriate district court.

11 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
12 appropriate remedy.

13 (6) Administrative penalties collected under this section must be deposited in the state general
14 fund."

15
16 **Section 33.** Section 75-11-203, MCA, is amended to read:

17 **"75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following
18 definitions apply:

19 (1) "Board" means the board of environmental review provided for in 2-15-3502.

20 (2) "Closure" or "to close" means the process of properly removing or filling in place an
21 underground storage tank that is no longer in service.

22 (3) "Department" means the department of environmental quality provided for in 2-15-3501.

23 (4) (a) "Installation" or "to install" means the placement of an underground storage tank system,
24 including excavation, tank placement, backfilling, and piping of underground portions of the underground
25 storage tank system that store or convey regulated substances. Installation includes repair or modification
26 of an underground storage tank system through such means as tank relining or the repair or replacement
27 of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means
28 installation, repair, or modification of a leak detection device that is external to and not attached to the
29 underground storage tank system and the installation, repair, or modification of a cathodic protection
30 system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in ~~75-10-403~~ [section 3].

(12) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in ~~75-10-403~~ [section 3], and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

Section 34. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including

1 death that results from the physical injury, sickness, or disease at any time.

2 (5) "Claim" means a written request prepared and submitted by an owner or operator or an agent
3 of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum
4 storage tank.

5 (6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal,
6 and other actions necessary to respond to a release.

7 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

8 (8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and
9 who:

10 (a) in the state of Montana, engages in the business of producing, refining, manufacturing, or
11 compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

12 (b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in
13 this state;

14 (c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in
15 this state;

16 (d) is an exporter;

17 (e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

18 (f) either blends gasoline with alcohol or blends heating oil with waste oil.

19 (9) "Double-walled tank system" means a petroleum storage tank and associated product piping
20 that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that
21 is capable of being monitored for leakage. The design and construction of these tank systems must meet
22 standards of the department and the department of justice fire prevention and investigation bureau. The
23 material used in construction must be compatible with the liquid to be stored in the system, and the system
24 must be designed to prevent the release of any stored liquid.

25 (10) "Eligible costs" means expenses reimbursable under 75-11-307.

26 (11) "Export" means to transport out of the state of Montana, by means other than in the fuel
27 supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a
28 refinery or pipeline terminal within the state of Montana.

29 (12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a
30 motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline

terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank.

(b) The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in ~~75-10-403~~ [section 3];

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury;

or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 35. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by

1 the department a corrective action plan that conforms with state, tribal (~~where~~ when applicable), and
2 federal corrective action requirements.

3 (c) (i) The department shall review the corrective action plan and forward a copy to a local
4 government office and, ~~where~~ when applicable, a tribal government office with jurisdiction over a corrective
5 action for the release. The local or tribal government office shall inform the department if it wants any
6 modification of the proposed plan.

7 (ii) Based on its own review and comments received from a local government, tribal government,
8 or other source, the department may approve the proposed corrective action plan, make or request the
9 owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or
10 operator. A plan finally approved by the department through any process provided in this subsection (1)(c)
11 is the approved corrective action plan.

12 (iii) After the department approves a corrective action plan, a local government or tribal government
13 may not impose different corrective action requirements on the owner or operator.

14 (d) The department shall notify the owner or operator and the board of its approval of a corrective
15 action plan.

16 (e) The owner or operator shall implement the approved plan. The department may oversee the
17 implementation of the plan, require reports and monitoring from the owner or operator, undertake
18 inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10,
19 ~~parts 4 and part 7, [sections 1 through 15],~~ and other applicable law and rules.

20 (f) The owner or operator shall document in the manner required by the board all expenses incurred
21 in preparing and implementing the corrective action plan. The owner or operator shall submit claims and
22 substantiating documents to the board in the form and manner required by the board. The board shall
23 forward each claim and appropriate documentation to the department. The department shall notify the
24 board of any costs that the department considers not reimbursable because of any failure to meet the
25 requirements of subsection (2). The department shall inform the owner or operator of any notification given
26 to the board.

27 (g) The owner or operator shall document, in the manner required by the board, any payments to
28 a third party for bodily injury or property damage caused by a release. The owner or operator shall submit
29 claims and substantiating documents to the board in the form and manner required by the board.

30 (h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed

1 to have originated from a double-walled tank system, the owner or operator shall document, in the manner
2 required by the board, the following:

3 (i) the date that the release was discovered;

4 (ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

5 (iii) that the double-walled tank system was properly installed and made of materials and
6 constructed in accordance with applicable department regulations.

7 (2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the
8 determination required by this subsection, inform the owner or operator of its determination, and, as
9 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board
10 shall affirmatively determine that:

11 (a) the expenses for which reimbursement is claimed:

12 (i) are eligible costs; and

13 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
14 corrective action plan approved by the department or for payments to a third party for bodily injury or
15 property damage; and

16 (b) the owner or operator:

17 (i) is eligible for reimbursement under 75-11-308; and

18 (ii) has complied with this section and any rules adopted pursuant to this section.

19 (3) If an owner or operator disagrees with a board determination under subsection (2), the owner
20 or operator may submit a written request for a hearing before the board. The hearing must be held at a
21 meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later
22 than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner
23 or operator.

24 (4) The board shall obligate money for reimbursement of eligible costs of owners and operators in
25 the order that the costs are finally approved by the board.

26 (5) (a) The board may, at the request of an owner or operator, guarantee in writing the
27 reimbursement of eligible costs that have been approved by the board but for which money is not currently
28 available from the fund for reimbursement.

29 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of
30 eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for

1 payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated
2 under subsection (4).

3 (c) When considering a request for a guarantee of payment, the board may require pertinent
4 information or documentation from the owner or operator. The board may grant or deny, in whole or in part,
5 any request for a guarantee."

6
7 **NEW SECTION. Section 36. Codification instruction.** (1) [Sections 1 through 15] are intended to
8 be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to
9 [sections 1 through 15].

10 (2) The code commissioner shall renumber 75-10-423 and 75-10-447 to Title 75, chapter 11.

11
12 **NEW SECTION. Section 37. Coordination instruction.** (1) If [LC 823] is passed and approved and
13 if it creates an environmental rehabilitation and prevention account in the state special revenue fund, then
14 [sections 12 and 30] are void.

15 (2) If [LC 823] is not passed and approved or if [LC 823] as passed and approved does not create
16 an environmental rehabilitation and prevention account in the state special revenue fund, then [sections 13
17 and 31] are void.

18
19 **NEW SECTION. Section 38. Saving clause.** [This act] does not affect rights and duties that
20 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
21 act].

22 (2) Rules adopted pursuant to 75-10-405 that are in effect on [the effective date of this act]
23 continue in effect until amended or repealed pursuant to 75-10-405 or [section 5].

24 -END-

COMMITTEE--HOUSE NATURAL RESOURCES

CHAIRMAN--DICK KNOX

SECRETARY-STEPHANIE BRAUN/430

NORMAL SCHEDULE => SITE: ROOM 437

DAYS: M,W,F

TIME: 3:00 P.M.

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0031	HEAVY RUNNER, GEORGE	EXTEND RENEWABLE RESOURCE GRANT PROGRAM ELIGIBILITY TO TRIBAL GOVERNMENTS	1/06	1/08	PASS AS AMENDED	2/3	VOTE: 15-3	2/04
HB0050	COBB, JOHN	PROVIDE FOR REGULATION OF NATURAL GAS TRANSPORTER AS COMMON CARRIER	1/11	1/31	TABLED ON	02/19	VOTE: 13-5	
HB0054	BOHLINGER, JOHN	SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS	1/06	1/13	TABLED ON	01/20	VOTE:12-5	
HB0059	JOHNSON, ROYAL	SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS	1/06	1/13	DO PASS	1/20	VOTE: 16-1	1/21
HB0073	MOOD, DOUG	TRANSFER RULEMAKING AUTHORITY	1/06	1/17	DO PASS	1/17	VOTE: 18-0	1/20
HB0081	DEVANEY, CHARLES	REVISE OIL AND GAS LEASING AND TAXATION ACCOUNTABILITY	1/06	1/10	DO PASS	1/13	VOTE: 18-0	1/14
HB0118	GRADY, ED	CLARIFY REMEDIATION CONTRACT PROCEDURES	1/06	1/10	PASS AS AMENDED	1/13	VOTE: 18-0	1/14
HB0120	ROSE, JOHN	MUDDY CREEK PERMIT AUTHORIZATION	1/06	1/17	PASS AS AMENDED	1/22	VOTE: 18-0	1/23
HB0132	KNOX, DICK	REQUIREMENTS FOR COMPLIANCE AND ENFORCEMENT REPORTING	1/06	1/17	DO PASS	1/17	VOTE: 18-0	1/20
HB0152	GRADY, ED	RECODIFY UNDERGROUND STORAGE TANK LAWS	1/06	1/15	PASS AS AMENDED	1/22	VOTE: 18-0	1/23
HB0153	GRADY, ED	ADMINISTRATIVE APPEAL FOR DISCHARGE PERMITS						

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on January 15, 1997, at
3:00 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 152 (1/9/97)
Executive Action: HB 156 DO PASS AS AMENDED

Before listening to HB 152, presentation about the Department of Natural Resource and Conservation (DNRC) and Department of Environmental Quality (DEQ) restructuring, presentation by Bud Clinch and Mark Simonich, Exhibit #3

{Tape: 1; Side: a; Approx. Time Count: 2.1; Comments:
presentation both sides a & b and first part of tape #2 side
"a".}

Questions/Discussion

{Tape: 2; Side: a; Approx. Time Count: 9.3; Comments: none.}

HEARING ON HB 152

Sponsor: Rep. Ed Grady, H.D. #55 introduced HB 152

{Tape: 2; Side: a; Approx. Time Count: 12.4; Comments: Bill would separate hazardous waste and regulated substances.}

Proponents:

Denise Mills, Remediation Division Administrator with the Department of Environmental Quality, Exhibit #1

{Tape: 2; Side: a; Approx. Time Count: 14.6; Comments: recodify the law, makes the laws easier to understand and to facilitate the administration of the laws.}

Don Vidrine, Chair of the Air and Waste Management Bureau of the Department of Environmental Quality

{Tape: 2; Side: a; Approx. Time Count: 18.0; Comments: noted error in date on the House Bill will give corrections to Staffer Kathleen Williams.}

Roxanne Kohl, MT Audubon

{Tape: 2; Side: a; Approx. Time Count: 19.8; Comments: none.}

Leo Barry, Attorney in a Law Office, representing himself

{Tape: 2; Side: a; Approx. Time Count: 20.1; Comments: none.}

Anne Hedges, Montana Environmental Information Center

{Tape: 2; Side: a; Approx. Time Count: 21.3; Comments: none.}

Opponents: none

Informational Testimony: none

Questions From Committee Members and Responses:

{Tape: 2; Side: a; Approx. Time Count: 21.9; Comments: none.}

{Tape: 2; Side: b; Approx. Time Count: 0.1; Comments: still questions from the Committee.}

Closing by Sponsor: Rep. Grady, H.D. #55 closed

{Tape: 2; Side: b; Approx. Time Count: 7.4; Comments: none.}

EXECUTIVE ACTION ON HB 156

Motion: By Rep. Trexler, DO PASS

{Tape: 2; Side: b; Approx. Time Count: 9.2; Comments: none.}

Discussion: Rep. Harper, opened the discussion

1/15/97
Exhibit #1

**Testimony of the
Department of Environmental Quality
in Support of HB 152
January 15, 1997**

Before the House Committee
on Natural Resources
State of Montana

Presented by Denise Mills
Remediation Division
Department of Environmental Quality

Mr. Chairman and members of the Committee:

For the record, my name is Denise Mills and I am the Remediation Division Administrator at the Department of Environmental Quality.

HB 152 is a strict recodification of the Montana Hazardous Waste and Underground Storage Tank Act, that splits the hazardous waste and underground storage tank provisions into two separate acts.

The sole intent of HB 152 is to recodify the law. It does not include any substantive changes to the law. For example, this bill does not alter the department's authority and it has no effect on penalties or other provisions already covered in the law. The primary purposes of this bill are to: (1) make the laws more easily understood by the public and (2) facilitate administration of the laws by the department's separate hazardous waste and underground storage tank programs.

In 1989, the Montana Hazardous Waste Act was significantly amended to include provisions for the prevention and correction of releases of regulated substances, such as gasoline or diesel fuels, from underground storage tanks. The hazardous waste provisions in the law apply only to materials that meet the definition of hazardous waste, such as spent chlorinated solvents from dry cleaning or degreasing operations. The underground storage tank provisions in the law apply only to materials that meet the regulated substance definition.

Key to understanding the intent of HB 152 is the recognition that hazardous wastes and regulated substances are, by definition, mutually exclusive. Entities affected by hazardous waste provisions in the law are distinct and significantly different from entities affected by the underground storage tank provisions. For these entities, administration of the hazardous waste laws and the underground storage tank laws under the rubric of "hazardous waste management" is confusing and ambiguous.

For the department, administering the Montana Hazardous Waste and Underground Storage Tank Act has become increasingly cumbersome. The Act has been amended several times since it passed in 1989, as required during development and evolution of the department's hazardous waste and underground storage tank programs. Without HB 152, this Act will likely become unwieldy as additional statutory changes become necessary in the future.

HB 152 is a straightforward approach that clarifies the laws concerning hazardous wastes and underground storage tanks. Passage of this legislation, consistent with the intent of the bill, will allow the department to efficiently administer the separate hazardous waste and underground storage tank laws, and will allow the public to more easily understand which law applies to a particular operation.

Mr. Chairman and members of the Committee, I appreciate the opportunity to speak to you today on behalf of the department. I will be available to answer any questions you might have.

NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: January 15, 1997

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Haley Beaudry	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Jon Ellingson	✓		Leave on
Rep. Doug Mood	✓		Leave on
Rep. Karl Ohs	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney	✓		on
Rep. Trudi Schmidt	✓		
Rep. Robert R. Story, Jr.	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		on
Rep. Lila V. Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		Leave on
Rep. Douglas T. Wagner	✓		on
Chairman Dick Knox	✓		

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

NATURAL RESOURCE COMMITTEE

BILL NO. 152

DATE: 1/15/97

SPONSOR(S) Ed Errady HD.55

PLEASE PRINT LEGIBLY

NAME & ADDRESS	REPRESENTING	BILL	PROPONENT	OPPONENT	INFORMA -TION WITNESS
Roxanne Kohl	MT AUDUBON	152	✓		
MARIE Simonich	DEQ	152	✓		
Anne Hedges	MEIL	152	✓		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on January 22, 1997, at
3:01 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 225, HB 219, HB 214
Executive Action: HB 120 DO PASS (18-0), HB 152
DO PASS (18-0), HB 162 DO PASS
(10-8)

HEARING ON HB 225

Sponsor: Rep. Sam Kitzenberg, HD #96

Opening Statement by Sponsor: Rep. Sam Kitzenberg introduced HB
225 and what it would provide

Amendments: Rep. Story moves to amend

Discussion: Kathleen Williams (Committee Staffer) explains the amendment to the Committee
{Tape: 3; Side: a; Approx. Time Count: 19.1; Comments: none.}

Motion/Vote: Amendment is voted on by a voice vote, 18-0 the amendment passes unanimously; Rep. Knox states that this is an extraordinary basis not a precedent
{Tape: 3; Side: a; Approx. Time Count: 20.0; Comments: none.}

Vote: on HB 120 as amended, 18-0, DO PASS unanimously

EXECUTIVE ACTION ON HB 152

Motion: By Rep. Ohs, DO PASS

Amendments: Rep. Knox introduces an amendment and has Kathleen Williams (Committee Staffer) explain the amendment to HB 152
{Tape: 3; Side: a; Approx. Time Count: 22.2; Comments: none.}

Discussion: Rep. Harper moved to amend; no discussion

Motion/Vote: voice vote on amendment, 18-0 passes; back to the body of the Bill with attached amendment; discussion of Bill as amended, Rep. Curtiss question regarding civil penalties regarding p. 7, section 12
{Tape: 3; Side: a; Approx. Time Count: 25.5; Comments: none.}

Vote: 18-0, Bill passes as amended

EXECUTIVE ACTION ON HB 162

Motion: By Rep. Harper, DO PASS
{Tape: 3; Side: b; Approx. Time Count: 3.9; Comments: none.}

Discussion: Rep. Orr, speak against the Bill, its earmarking, Department is using money from various fees, feel the Department should request funds and use funds from the General Fund and have to compete with the rest of the Departments, its a good program that can always use more money but not in this way; Rep. Harper, just sees that have to make some exceptions for fees that are earmarked and this is one of them
{Tape: 3; Side: b; Approx. Time Count: 4.1; Comments: none.}

Motion/Vote: all in favor voice vote, need to show hands, 8 with a vote of no



HOUSE STANDING COMMITTEE REPORT

January 23, 1997

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 152 (first reading copy -- white) do pass as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

1. Title, line 7.
Following: "ACT;"
Strike: "AND"
Following: "75-2-216,"
Strike: "75-10-210,"
2. Title, line 10.
Following: "MCA"
Insert: "; AND REPEALING SECTION 75-10-210, MCA"
3. Page 8, line 21.
Following: "75-2-216."
Strike: "Moratorium" through "provisions of (1), the" on line 25.
Insert: "Adoption of rules for solid or hazardous waste incinerator permits. The"
4. Page 8, line 26 and 27.
Following: "75-2-215"
Strike: remainder of line 26, through "incinerators" on line 27.
5. Page 8, line 29 through page 9, line 5.
Strike: Section 17 in its entirety.
Renumber: subsequent sections

Committee Vote:
Yes 18, No 0.

ss.
1-23-97
160903SC.Hgd

6. Page 31, line 7.

Following: line 6

Insert: "NEW SECTION. Section 35. Repealer. Section 75-10-210,
MCA, is repealed."

Renumber: subsequent sections

7. Page 31, line 14.

Strike: "30"

Insert: "29"

8. Page 31, line 17.

Strike: "31"

Insert: "30"

-END-

NATURAL RESOURCE COMMITTEE

ROLL CALL VOTE

DATE OF MEETING: 1/22

BILL NO. # 152

MOTION:

NAME	Yes	No	
Rep. Bill Tash (VC Maj.)			
Rep. Hal Harper (VC Min.)			
Rep. Haley Beaudry			
Rep. Aubyn A. Curtiss			
Rep. Jon Ellingson			
Rep. Doug Mood			
Rep. Karl Ohs			
Rep. Scott J. Orr			
Rep. Bob Raney			
Rep. Trudi Schmidt			
Rep. Robert R. Story, Jr.			
Rep. Jay Stovall			
Rep. Emily Swanson			
Rep. Lila V. Taylor			
Rep. Cliff Trexler			
Rep. Carley Tuss			
Rep. Douglas T. Wagner			
Chairman Dick Knox			

Total Vote: 18 Yes 0 No

Decision: DO PASS as Amended

Amendments

Motion: amendment accepted DO PASS

vote on amendment: 18-0

amendment file name: hb013401.2KW

NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 1/22/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Haley Beaudry	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. Doug Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney	✓		
Rep. Trudi Schmidt	✓		
Rep. Robert R. Story, Jr.	✓		excused (presenting) arrived late
Rep. Jay Stovall	✓		
Rep. Emily Swanson			
Rep. Lila V. Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Douglas T. Wagner	✓		
Chairman Dick Knox	✓		

Amendments to House Bill No. 152
First Reading Copy

Requested by Rep. Knox
For the Committee on Natural Resources

Prepared by Kathleen Williams
January 20, 1997

1. Title, line 7.
Following: "ACT;"
Strike: "AND"
Following: "75-2-216,"
Strike: "75-10-210,"
2. Title, line 10.
Following: "MCA"
Insert: "; AND REPEALING SECTION 75-10-210, MCA"
3. Page 8, line 21.
Following: "75-2-216."
Strike: "Moratorium" through "provisions of (1), the" on line 25.
Insert: "Adoption of rules for solid or hazardous waste incinerator permits. The"
4. Page 8, line 26 and 27.
Following: "75-2-215"
Strike: remainder of line 26, through "incinerators" on line 27.
5. Page 8, line 29 through page 9, line 5.
Strike: Section 17 in its entirety.
Renumber: subsequent sections
6. Page 31, line 7.
Following: line 6
Insert: "NEW SECTION. Section 35. Repealer. Section 75-10-210, MCA, is repealed."
Renumber: subsequent sections
7. Page 31, line 14.
Strike: "30"
Insert: "29"
8. Page 31, line 17.
Strike: "31"
Insert: "30"

COMMITTEE--SENATE NATURAL RESOURCES

CHAIRMAN--LORENTS GROSFIELD

SECRETARY-GAYLE HAYLEY/404

NORMAL SCHEDULE => SITE: ROOM 405

DAYS: M,W,F

TIME: 3:00 P.M.

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0031	HEAVY RUNNER, GEORGE	EXTEND RENEWABLE RESOURCE GRANT PROGRAM ELIGIBILITY TO TRIBAL GOVERNMENTS	2/08	3/05	CONCUR AS AMENDED	VOTE:	3/14
HB0059	JOHNSON, ROYAL	SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS	1/29	2/05	CONCUR	VOTE:	2/11
HB0071	MOOD, DOUG	INCREASE EMERGENCY LOAN CAP FROM THE RENEWABLE RESOURCE GRANT & LOAN PROGRAM	2/03	2/10	CONCUR	VOTE:	2/12
HB0073	MOOD, DOUG	TRANSFER RULEMAKING AUTHORITY	1/23	1/29	CONCUR	VOTE:	2/01
HB0081	DEVANEY, CHARLES	REVISE OIL AND GAS LEASING AND TAXATION ACCOUNTABILITY	1/17	1/22	CONCUR	VOTE:	2/01
HB0118	GRADY, ED	CLARIFY REMEDIATION CONTRACT PROCEDURES	1/20	1/24	CONCUR AS AMENDED	VOTE:	1/28
HB0120	ROSE, JOHN	MUDDY CREEK PERMIT AUTHORIZATION	1/28	2/05	CONCUR AS AMENDED	VOTE:	2/11
HB0132	KNOX, DICK	REQUIREMENTS FOR COMPLIANCE AND ENFORCEMENT REPORTING	1/23	1/29	CONCUR	VOTE:	2/01
HB0152	GRADY, ED	RECODIFY UNDERGROUND STORAGE TANK LAWS	1/29	2/05	CONCUR	VOTE:	2/11
HB0154	TAYLOR, LILA	GENERALLY REVISE STRIP MINE ACT	2/03	3/14	CONCUR	VOTE:	3/19
HB0156	GRADY, ED	2-YEAR INCREASE IN AMOUNT ALLOWED FOR RESOURCE DEVELOPMENT ON SCHOOL LANDS	2/21	3/07	CONCUR	VOTE:	3/25

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 5, 1997, at 3:00 P.M., in Room 405

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB152, SB253, HB120, SB146,
HB59, Posted Jan. 31, 1997.
Executive Action: SB175

HEARING ON HB152

Sponsor: REP. ED GRADY, HD 55, CANYON CREEK

Proponents: Denise Mills, Remediation Administer, Dept. of
Environmental Quality

Opponents: None

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, stated that HB152 was a housekeeping bill requested by the Department of Environmental Quality. This bill recodifies the underground storage tank provisions and the Montana Hazardous Waste Underground Storage Tank Act. He said this legislation will streamline the Dept.'s ability to administer the underground storage tank and hazardous waste programs, which are managed by different divisions, and will facilitate the public and regulated communities' ability to understand the regulations. He said basically, all this bill does is separate the two programs so the Dept. can administer the programs more efficiently.

Proponents' Testimony:

Denise Mills, Remediation Division Administrator, Dept. of Environmental Quality, stated that HB152 is a recodification of the Montana Hazardous Waste and Underground Storage Tank Act, that splits the Hazardous Waste and Underground Storage Tank provisions into two acts. The intent of the bill is to recodify the law, not to make any changes to the law. The primary purposes were to make the laws more easily understood by the public and to facilitate administration of the laws by the Dept. She distributed her written testimony, attached as (EXHIBIT 1).

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MACK COLE asked Denise Mills if these were not separated, is there another way to do this besides setting up two separate sets of rules and regulations for these two different types of programs. He questioned if this would actually streamline the process.

Denise Mills replied that the Dept. had evaluated that before proposing this bill and found that this way was the most efficient way to make these laws easier to work with, and less difficult to interpret.

SEN. DALE MAHLUM asked Ms. Mills if there would be an additional burden on the filing users?

Ms. Mills said no, the Dept. is not proposing any additional burden to those entities. This bill would make it easier for the regulated public to follow these laws, and would make it easier for the Dept. to administer them.

SEN. MIKE TAYLOR asked Ms. Mills if any additional responsibility or fiscal impact would result from this legislation.

Ms. Mills answered no, and they were not anticipating any changes in the current program.

SEN. THOMAS KEATING asked Ms. Mills if the definitions in the New Section 3, were identical to what was in the codes now.

Ms. Mills said that under the definitions, the only changes made was to strictly put in definition of "hazardous waste" into the codification of hazardous waste laws, and to put definition of "regulated substances" into the underground storage tank laws.

CHAIRMAN LORENTS GROSFIELD asked Ms. Mills to confirm that this bill didn't alter DEQ's authority, or penalties, or extended any rulemaking authority?

Ms. Mills answered that was correct.

Closing by Sponsor:

REP. GRADY closed by saying the bill is just a housekeeping matter. He said the reason it is a long bill, is only because the whole statute has to be gone through, but it does not really change anything in either program. He added that SEN. BECK would carry the bill on the floor.

CHAIRMAN GROSFIELD closed the hearing on HB152 and opened the hearing on SB253.

{Tape: 1; Side: A; Approx. Time Count: 3:17; Comments: .}

HEARING ON SB253

Sponsor: SEN. J.D. LYNCH, SD19, BUTTE

Proponents: Jim Johnson, Director of Public Works
Russ Ritter, Missoula

Opponents: Jan Sensibaugh, Dept. of Environmental Quality
Anne Hedges, Mt. Environmental Information Center
Jim Leiter, BFI Environmental and Operation Manager
Tom Daubert, Waste Management Inc.
Ted Lange, Northern Plains Resource Council
Chris Cerquone, Missoula County Health Dept.
Doug Sparrow, City/County Sanitation, Helena
Mark Johnson, Flathead Disposal

Opening Statement by Sponsor:

SEN. J.D. LYNCH, SD 19, BUTTE, stated that SB253 was a common sense efficiency bill. He also called it a "bureaucracy get out of our way, let us run our business efficiently and properly bill." He said that Anaconda and Butte shared a four million dollar new landfill. In addition to the new landfill, Butte has a "demolition dump". The problem was that they had been waiting for three years for the bureaucracy to get rules that they could dump construction material, (not asbestos, paint, toxic materials, etc.) into the demolition dump. He said they did not want to use their \$4 Million dollar dump for these materials. He mentioned some of the restrictions of a Class III dump. He said it was a good bill and hoped the committee would support it.

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 7,
1997, at 3:00 p.m., in Room 405

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: Sen. Vivian M. Brooke (D)

Members Absent:

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 273; Posted
Executive Action: SB 273, SB 146, SB 223, SB 253
HB 120, HB 59, HB 152, HB 162

HEARING ON SB 273

Sponsor: SEN. LINDA NELSON, SD 49, Medicine Lake

Proponents: Mike Volesky, Montana Association of Conservation
Districts
Ray Beck, Department of Natural Resources &
Conservation
Mike Murphy, Montana Water Resources Association

Opponents: None

EXECUTIVE ACTION ON HB 120

Amendments: SEN. LORENTS GROSFIELD distributed copies of Amendment hb012001.alm (EXHIBIT 3).

Motion: SEN. TOM KEATING MOVED HB 120 BE CONCURRED IN.

Motion: SEN. LORENTS GROSFIELD MOVED DO PASS ON AMENDMENT hb012001.alm.

Discussion: SEN. GROSFIELD said Amendment hb012001.alm clarified HB 120 because it deleted some of the language. He said he was afraid the present drafting of HB 120 would lead to confusion in the statute.

Vote: Motion DO PASS ON AMENDMENT hb012001.alm CARRIED UNANIMOUSLY.

Motion: SEN. TOM KEATING MOVED HB 120 BE CONCURRED IN AS AMENDED.

Discussion: SEN. GROSFIELD commented when the Committee heard the bill, there was legitimate concern exceptions were being made to what had already been approved by the legislature; however, he felt in this particular case, it was just fine. He was, though, concerned about starting to open things a little at a time without really understanding what was being done.

SEN. MACK COLE asked if there were suggestions to do this another way besides hanging up the applications. SEN. GROSFIELD said the siltation in Muddy Creek was probably good soil which went down the creek and ended up at New Orleans. He said if the soil could be put back onto the land around, everybody would benefit; in a small sense, that was what he envisioned HB 120 was trying to do. SEN. GROSFIELD said a lot of money had been spent on the Creek trying to do just that; however, though some good had been done, the problems had not been solved.

SEN. COLE said he was afraid if an exception (though it was justified in this case) was made for Muddy Creek, other requests for exception would follow. SEN. GROSFIELD said that was why he commented as he did -- he wanted them on record. He said they were opening up a basin closure but were doing it for a very specific reason, i.e. it could help the water quality situation in Muddy Creek. He stressed they weren't doing it because someone wanted some water, and he hoped if in the future they were faced with some proposals to open other closures, they be treated in the same way.

Vote: MOTION HB 120 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB152

Motion: SEN. BEA MCCARTHY MOVED HB152 DO CONCUR

Discussion: Don Vidrine, DEQ, stated that this bill just separated the programs into two different sets.

SEN. THOMAS KEATING asked Mr. Vidrine if they would be asking for more FTEs. He answered no.

SEN. VAN VALKENBURG asked Don Vidrine, DEQ, why there was so many new sections with only one statute being repealed.

Mr. Vidrine replied that it was just a codification process, not new authorities.

Vote: Motion CARRIED UNANIMOUSLY.

CHAIRMAN GROSFIELD closed the hearing on HB152 and adjourned at 4:51 PM.